



# Department of Justice

FOR IMMEDIATE RELEASE  
WEDNESDAY, AUGUST 11, 2004  
WWW.USDOJ.GOV

AT  
(202) 514-2007  
TDD (202) 514-1888

## **JUSTICE DEPARTMENT ANNOUNCES AGREEMENT TO MODIFY SBC/BELLSOUTH CONSENT DECREE**

### ***SBC & BellSouth Agree Not to Acquire Certain Spectrum Licenses in Indiana***

WASHINGTON, D.C. -- The Department of Justice, SBC Communications Inc., and BellSouth Corp. today reached an agreement to seek a modification to a consent decree that currently prohibits the companies from reacquiring previously divested spectrum licenses in California and Indiana. The proposed modification would allow SBC and BellSouth, through their joint venture Cingular Wireless LLC, to reacquire certain of the divested spectrum licenses as part of their planned acquisition of AT&T Wireless Services Inc., which is currently under separate investigations by the Department and the Federal Communications Commission. The requested modification, which was filed today in the U.S. District Court in Washington, D.C. and which must be approved by the court, is subject to the condition that the companies not acquire control over other spectrum currently being used by AT&T Wireless in five of the license areas in Indiana.

In 2000, the Department challenged the formation of Cingular by SBC and BellSouth, alleging that the joint venture would reduce competition for wireless telecommunications services in a number of local markets in Louisiana, California and Indiana. At the same time, a consent decree was filed that required SBC and BellSouth to sell wireless businesses in 16 markets and prohibited them from reacquiring the divested spectrum licenses in those areas. AT&T Wireless purchased the divested wireless businesses in California and Indiana.

If Cingular's proposed acquisition of AT&T Wireless were consummated without a modification, SBC and BellSouth would violate the decree by reacquiring the divested California and Indiana spectrum licenses. SBC and BellSouth therefore requested that the Department consider supporting a request that the court modify the decree. In order to give the court time to review the requested modification and to allow for a 30-day public comment period, the Department has taken this action in advance of any action related to the Cingular/AT&T Wireless acquisition.

"The competition from new entrants that was in its infancy when the decree was entered has flourished. With the changes in the marketplace and the conditions agreed to by SBC and BellSouth, retaining the decree's prohibition on reacquiring the spectrum licenses in California and Indiana is no longer necessary to protect consumers," said R. Hewitt Pate, Assistant Attorney General in charge of the Department's Antitrust Division. "The Department's review evaluated competition today in the particular geographic areas that were of concern in the original case, and no inference should be drawn regarding the Department's likely decision on the larger Cingular/AT&T Wireless merger."

The Department considered several factors in determining whether to agree to the modification in each of the geographic markets covered by the original decree. These included whether entry has occurred since the decree was entered, the number and relative strength of competitors offering wireless mobile telephony services, the availability of additional spectrum to other wireless carriers to allow them to offer high quality voice services and introduce advanced data services, and the competitive effect of allowing the spectrum licenses to be reacquired in the context of Cingular's proposed acquisition of AT&T Wireless. In general, there are more wireless carriers offering wireless telephony services today in many of the

markets covered by the decree, and the newer providers using PCS spectrum that had just begun to operate in 2000 have been successful at attracting significant numbers of new customers. In the areas affected by the modification, the percentage of customers served by the defendants has decreased significantly, and in none of the affected areas would the combined Cingular/AT&T Wireless have a market share approaching those that raised concerns from the combination of SBC's and BellSouth's mobile wireless businesses in 2000.

The Department, however, continues to have competitive concerns regarding the possible reacquisition by Cingular of spectrum in five of the Indiana license areas that was divested to AT&T Wireless, which also effectively controls spectrum that is currently licensed to Von Donop Inlet PCS LLC in those areas. To assuage these concerns, SBC, BellSouth, and AT&T Wireless have agreed to relinquish all control and influence over the use or disposition of the Von Donop licenses in those five areas, contingent upon the closing of the Cingular/AT&T Wireless acquisition. The Department will review and approve in its sole discretion any agreements among BellSouth, SBC, AT&T Wireless, and Von Donop relating to the Von Donop spectrum, to ensure that Cingular will not be able to influence or control how that spectrum is used.

A notice of the motion to modify the consent decree and the Department's tentative consent to the modification will be published in the Federal Register. Any person may comment on the proposed modification by submitting comments to Nancy Goodman, Chief, Telecommunications and Media Enforcement Section, Antitrust Division, United States Department of Justice, 1401 H Street, NW, Suite 8000, Washington, D.C. 20530 (202-514-5621). After the conclusion of a 30-day period for public comment, the United States will within

a reasonable period file with the court copies of any comments that it receives and its response to those comments.

###

04-555